

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0063
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
VINCENT PAUL COLETTI,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101817001

Honorable Deborah Bernini, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra

Tucson
Attorneys for Appellee

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By David J. Euchner

Tucson
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V Á S Q U E Z, Presiding Judge.

¶1 Appellant Vincent Coletti appeals from his convictions arising from the burglary of a Tucson school. He maintains the trial court erred in admitting certain

evidence that he claims was insufficiently authenticated and “misled the jury.” Finding no error, we affirm.

Background

¶2 “We view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury’s verdicts.” *State v. Miles*, 211 Ariz. 475, ¶ 2, 123 P.3d 669, 670 (App. 2005). On the night of May 15, 2010, a Tucson Unified School District employee saw a man wearing a baseball cap, later identified as Coletti, inside a high school and then fleeing from its grounds after triggering the school’s alarm. Two of the school’s vending machines had been broken into, and Coletti was found on the roof of a nearby home. Police officers also discovered a “coin dispenser . . . with a lot of currency [and] coins” and tools in a backpack Coletti had dropped at the school. And, near the home where Coletti was apprehended, they found lock picks, screwdrivers, \$123.00 in dollar bills, and a “school guide” page from a telephone book listing the high school, all in or under a baseball cap.

¶3 Coletti was arrested and charged with third-degree burglary, possession of burglary tools, and criminal trespass. After a jury trial, he was convicted as charged, and the court imposed enhanced, presumptive, concurrent sentences, the longest of which is ten years. This appeal followed.

Discussion

¶4 On appeal, Coletti maintains the trial court “erred in admitting photographs that misled the jury into believing that the evidence depicted in [them] was found by police in the location shown,” and this error violated his “constitutional rights to due

process and a fair trial.” On the first day of trial, Coletti objected to the introduction of the photographs of the baseball cap, money, and tools found near the home where he was arrested on the basis that there was no one “who can testify as to where [the evidence] was found.” He argued that one officer had photographed the evidence, but was “not the finder,” and that another had checked the items into evidence, but that neither officer should be allowed to testify as to where the evidence was found because they did not find it. He characterized this issue as one related to the “chain of custody,” but the court suggested it was in fact a question of foundation. Coletti did not object to the photographs or testimony on any constitutional grounds.

¶5 The trial court overruled the objection and allowed the state to call the officer who had taken the photographs to testify “that he was asked to take photographs of items of evidence and that he took those photographs and where he took them.” The court stated Coletti could then argue “what he wants in closing regarding reasonable doubt” as to the location of the evidence. The officer who photographed the items testified that another officer had told him “there was property in between the house [where Coletti was arrested] and the air conditioning unit.” He testified he had gone there and found the items inside a walled area, and had taken the photographs without moving them except to pick up the items on top to photograph those underneath. The photographs were admitted into evidence. Coletti did not address the question of where the items had been found during closing arguments.

¶6 Because Coletti did not raise his constitutional claims below, we review them only for fundamental error. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601,

607 (2005); *State v. Lefevre*, 193 Ariz. 385, ¶ 15, 972 P.2d 1021, 1025 (1998) (constitutional claims generally forfeited if not asserted below). To the extent Coletti separately challenges the trial court’s decision to admit the evidence over his foundation objection, we review for an abuse of discretion. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 7, 186 P.3d 33, 35 (App. 2008).

¶7 Coletti argues the trial court erred in admitting the photographs because they lacked “even the most basic authentication required by Rule 901(a), Ariz. R. Evid.,” and were not supported by sufficient foundation to establish they were “a correct and accurate reproduction of what they purported to depict.” But, although evidence may be authenticated by the “testimony of [a] witness with knowledge,” Ariz. R. Evid. 901(b)(1), it may also be authenticated by other means. Indeed, in *Haight-Gyuro*, on which Coletti relies for his argument, this court explained that in determining whether evidence has been properly authenticated, the question “is whether there is ‘sufficient evidence to support a jury finding that the offered evidence is what its proponent claims it to be.’” 281 Ariz. 356, ¶ 14, 186 P.3d at 37, *quoting State v. Lavers*, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991). We conclude there was sufficient evidence here from which the jury could have determined the photographs at issue accurately depicted the location where the items had been found by police.

¶8 Under Rule 901(b)(9), evidence may be authenticated by “[e]vidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.” Here the officer who photographed the items testified it was Tucson Police Department policy to “leave evidence in place until after

you've photo[graph]ed it.” And he further explained that if an officer did move an item he or she would “secure it,” and that the place where the items here were photographed was not such a secure location.

¶9 Additionally, the items here were found in a walled area, only accessible “through a wall or through a gate” on the property where Coletti was found. The homeowner testified the gates to the property had been locked, and officers had not allowed anyone else to enter the property from the time they first arrived there. And, the items were photographed behind an air conditioning unit with a “pony wall” nearby, which the homeowner testified “would enable somebody to get up on [the] roof.” Further, the employee who saw Coletti in the school testified he had been wearing a “ball cap” when he fled, and the money and burglary tools were in and under a baseball cap when they were photographed by the officer. Thus, taken as a whole, *see Haight-Gyuro*, 218 Ariz. 356, ¶ 17, 186 P.3d at 37, the evidence presented was sufficient for the jury to have concluded that the photographs depicted, “with reasonable accuracy,” the evidence as it was found by police. *Id.* ¶ 14.

¶10 Because we conclude the evidence was sufficiently authenticated and the trial court did not abuse its discretion in admitting it, Coletti has not established that the court erred, and he has not sustained his burden to show fundamental error occurred in this matter. *Henderson*, 210 Ariz. 561, ¶ 22, 115 P.3d at 608 (defendant bears burden of establishing fundamental error occurred). His due process and fair trial claims based on the court's ruling therefore also fail.

Disposition

¶11 Coletti's convictions and sentences are affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge